

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**TOLL BROS., INC. and TOLL SAN
ANTONIO TX LLC,**

Plaintiffs,

VS.

**LIBERTY MUTUAL FIRE INSURANCE
COMPANY, ET AL.**

Defendant.

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CIVIL ACTION NO. 5:17-CV-748-DAE

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW Plaintiffs Toll Bros., Inc. and Toll San Antonio TX LLC (“Plaintiffs” or “Toll Bros.”), Defendants Cincinnati Insurance Company, Admiral Insurance Company, and Employers Mutual Casualty Company (collectively, “Settling Defendants”) and Intervenor First Mercury Insurance Company (“Intervenor”), and file this Joint Stipulation of Dismissal With Prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

1. Plaintiffs are Toll Bros., Inc. and Toll San Antonio TX LLC. Defendants are Cincinnati Insurance Company, Admiral Insurance Company, and Employers Mutual Casualty Company. Intervenor is First Mercury Insurance Company.

2. On August 8, 2017, Plaintiffs filed this lawsuit against the Settling Defendants and a non-settling Defendant Liberty Mutual Fire Insurance Company [Doc. #1].

3. On October 11, 2017, Plaintiffs filed a Stipulation of Dismissal Without Prejudice in regard to its claims against Liberty Mutual Fire Insurance Company [Doc. #26].

3. The Settling Defendants answered the lawsuit [Docs. #10, 11, and 15]. Settling Defendants, through their counsel, agree to this Joint Stipulation of Dismissal With Prejudice.

4. Intervenor filed its Motion to Intervene on September 20, 2017 [Doc. #17]. This Court granted that motion [Doc. #24], and the complaint in intervention was docketed [Doc. #25].

5. This case is not a class action. A receiver has not been appointed in this action. This case is not governed by any federal statute requiring an order of the Court for dismissal of the case.

6. Plaintiffs have not previously dismissed an action based on or including the same claims as those presented in this suit.

7. Plaintiffs agree to dismiss **with prejudice** their claims against the Settling Defendants.

8. Intervenor has asserted a claim against the Settling Defendants. Intervenor agrees to dismiss its claims in intervention **with prejudice** as to the Settling Defendants.

8. Defendant Cincinnati Insurance Company asserted a counterclaim against Plaintiffs. Defendant Cincinnati Insurance Company agrees to dismiss its counterclaims **with prejudice**. No other Defendant filed a counterclaim against Plaintiffs.

9. This dismissal is **with prejudice** to the refiling of the claims brought by Plaintiffs against the Settling Defendants.

10. This dismissal is **with prejudice** to the refiling of the claims brought by Defendant Cincinnati Insurance Company against Plaintiffs.

11. This dismissal is **with prejudice** to the refiling of the claims brought by Intervenor First Mercury insurance Company against Settling Defendants and Plaintiffs.

Respectfully submitted,

/s/ Lee H. Shidlofsky

Lee H. Shidlofsky
Attorney in Charge
State Bar No. 24002937
lee@shidlofskylaw.com
Douglas P. Skelley
State Bar No. 24056335
doug@shidlofskylaw.com
SHIDLOFSKY LAW FIRM PLLC
7200 N. Mopac Expressway, Suite 430
Austin, Texas 78731
(512) 685-1400
(866) 232-8709 - Fax
ATTORNEYS FOR PLAINTIFFS

/s/ Greg C. Wilkins

Greg C. Wilkins
Attorney in Charge
State Bar No. 00797669
gcw@obt.com
ORGAIN BELL & TUCKER, LLP
P O Box 1751
Beaumont, TX 77704-1751
(409) 838-6412
(409) 838-6959 - Fax
**ATTORNEYS FOR DEFENDANT
ADMIRAL INSURANCE COMPANY**

/s/ Aaron L. Mitchell

Aaron L. Mitchell
Attorney in Charge
State Bar No. 14205590
aaronm@tbmmlaw.com
Stephen A. Melendi
State Bar No. 24041468
stephnm@tbmmlaw.com
Matthew Rigney
State Bar No. 24068636
mattr@tbmmlaw.com
TOLLEFSON BRADLEY MITCHELL &
MELENDI, L.L.P.
2811 McKinney Avenue, Suite 250

Dallas, Texas 75204
(214) 665-0100
(214) 665-0199 – Fax
**ATTORNEYS FOR EMPLOYERS
MUTUAL CASUALTY COMPANY**

/s/ George L. Lankford

George L. Lankford
Attorney in Charge
State Bar No. 11934800
glankford@fhmbk.com
Marc H. Fanning
State Bar No. 06805400
mfannin@fhmbk.com
FANNING HARPER MARTINSON
BRANDT & KUTCHIN
A Professional Corporation
Two Energy Square
4849 Greenville Ave., Suite 1300
Dallas, Texas 75206
(214) 369-1300
(214) 987-9649 - Fax
**ATTORNEYS FOR DEFENDANT /
COUNTER-PLAINTIFF THE
CINCINNATI INSURANCE COMPANY**

/s/ Brian S. Martin

Brian S. Martin
Attorney of Record
State Bar No. 13055350
bmartin@thompsoncoe.com
Cyrus W. Haralson
State Bar No. 06805400
charalson@thompsoncoe.com
THOMPSON, COE, COUSINS, & IRONS, L.L.P.
One Riverway, Suite 1400
Houston, Texas 77056
(713) 403-8210
(713) 403-8299 - Fax
**ATTORNEYS FOR INTERVENOR
FIRST MERCURY INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

On this 29th day of December, 2017, I hereby certify that I filed a copy of the foregoing with this Court via the CM/ECF system, which will forward a copy of same to all counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Douglas P. Skelley
Douglas P. Skelley